IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 18865 of 2004(U)

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AGAINST THE ORDER DATED 28/05/04 IN EP.166/02 IN OS.268/2000 of MUNSIFF COURT, MANJERI

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PETITIONER:

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P. RAJESHKUMAR, S/O SARADA AMMA,
PORUR HOUSE, CHETTIPPADAM, POOKKOTTUMPADAM P.O.,
AMARAMBALAM AMSOM, NILAMBUR TALUK.

BY ADV. SRI.V.RAJENDRAN

RESPONDENT:

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KARIMBAYIL THANKAMANI, D/O. RAGHAVAN
NAIR, REPRESENTED BY POWER OF ATTORNEY HOLDER
KARIMBAYIL RAMACHANDRAN, S/O. RAGHAVAN NAIR,
THONDI, NILAMBUR R.S. (POST),
AMARAMBALAM AMSOM, NILAMBUR TALUK.

BY ADV. SRI.BABU S. NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 18865/2004

APPENDIX

PEITTIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER.

EXT.P2 : TRUE COPY OF THE REJOINDER FILED BY THE RESPONDENT.

EXT.P3 : TRUE COPY OF DOCUMENT NO.3430/97 OF SRO ARECODE.

EXT.P4 : TRUE COPY OF THE ORDER DT.28.05.04 IN EP NO.166/02 IN OS NO.268/2000.

EXT.P5 : TRUE COPY OF THE SALE DEED DT.1.1.1999.

**PIUS C. KURIAKOSE, J.**

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W.P.(C) No.18865 OF 2004

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Dated this the 4th day of June, 2007

**JUDGMENT**

In this proceedings for execution of a money decree the judgment debtor impugns Ext.P4 order directing his arrest and detention in civil prison after finding that in spite of sufficient means the judgment debtor has not paid off the decree debt.

2. Sri.V.Rajendran, learned counsel for the petitioner submits that in response to the notice which was received under Rule 37 of Order XXI, the petitioner filed Ext.P1 objections contending that he is not liable to be arrested or detained since he is not having sufficient means to pay off the decree debt either in a lump or a substantial portion there of. Counsel submitted that it is in Ext.P2 rejoinder that respondent furnished the details regarding the properties allegedly owned and possessed by the petitioner and the court below did not afford even breathing time to the petitioner for filing a reply to Ext.P2. Prejudice has been caused to the petitioner on account of that. The cross examination of PW1 had also to be done without the presence of the petitioner. This has also resulted in prejudice to the petitioner.

3. There is nothing on record to show that a plea for adjournment was made by the petitioner to file reply to Ext.P2. In fact I find that the

counsel for the petitioner cross examined PW1 without any diffidence. I am sure that if a request had been made for adducing counter evidence, the learned Munsiff would have granted the same.

The jurisdiction of this Court under Article 227 is visitorial and is to be invoked only in exceptional circumstances. I am not prepared to say that Ext.P4 order is so unreasonable or illegal as to warrant correction under Article 227. The challenge against Ext.P4 will fail. However, by way of indulgence, even as I dismiss the writ petition, I am inclined to permit the petitioner to pay off the decree debt in monthly instalments. The claim as on date under the Execution Petition is around Rs.75,000/-. The learned Munsiff will keep Ext.P4 in abeyance on condition that the petitioner pays to the respondent every month commencing from the 30th June 2007 at the rate of Rs.7,500/- towards the decree debt. In the event of any default the petitioner will forfeit the above benefit and in such an event Ext.P4 will become operative immediately. The Writ Petition is disposed of accordingly. No costs.

**PIUS C. KURIAKOSE, JUDGE**

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